

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: T & L Properties, LLC)
Ward 072, Block 086, Parcel 00052) Shelby County
Commercial Property)
Tax Year 2005)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$33,300	\$146,800	\$180,100	\$72,040

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 20, 2006 in Memphis, Tennessee. The taxpayer was represented by Robert L. Boggan and John Dale. The assessor of property was represented by staff appraiser Sandra Scoggin, TCA.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a daycare center located at 3428 University in Memphis, Tennessee.

The taxpayer contended that subject property should be valued at \$85,000. In support of this position, the taxpayer's representatives testified that a local realtor advised them subject property would realistically sell for \$65,000-\$85,000. In addition, Messrs. Boggan and Dale stated that on September 19, 2006 they had offered to sell subject property to the operator of the daycare for \$85,000. Moreover, the taxpayer's representatives maintained that neither the income approach nor comparable sales support the current appraisal of subject property. Finally, it was stated that subject property has a drainage problem which causes a diminution in value.

The assessor contended that subject property should be valued at \$177,575. In support of this position, the cost approach was introduced into evidence. In addition, Ms. Scoggin argued that the taxpayer's comparable sales lack probative value. Ms. Scoggin noted that two of the sales involved multiple parcels, another sale was between a church and ministry, and the other sale was between a bank and an individual.

I. Jurisdiction

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the fact that the taxpayer's representative failed to appear for a hearing scheduled before the full Shelby County Board of Equalization.¹

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovetz*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond its control prevented it from appearing before the Shelby County Board of Equalization.

The taxpayer's representatives testified that they were simply unsure why their representative failed to appear before the full county board of equalization. The representatives did not dispute that they received notice of the hearing.

Respectfully, the administrative judge finds that the taxpayer failed to establish that a circumstance beyond its control was the reason for not appearing before the full board. Indeed, the representatives did not even know why their agent failed to appear for the scheduled hearing. The administrative judge finds this particularly puzzling since the

¹ The representative, a local realtor, had previously appeared before a hearing examiner. The taxpayer requested a hearing before the full board of equalization.

comparable sales they introduced were prepared by the same real estate firm on September 20, 2006.

Based upon the foregoing, the administrative judge finds that the State Board of Equalization lacks jurisdiction in this matter and the taxpayer's appeal must therefore be dismissed.

II. Value

The administrative judge finds it technically unnecessary to address the issue of value since the State Board of Equalization lacks jurisdiction. Nonetheless, the administrative judge finds it appropriate to briefly explain why additional evidence would be necessary to support a reduction in value.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that January 1, 2005 constitutes the relevant assessment date. See Tenn. Code Ann. § 67-5-504(a). The administrative judge finds that events occurring after January 1, 2005, such as the offer to sell subject property, are irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.

The administrative judge finds that the realtor who estimated subject property would sell for \$65,000-\$85,000 was not present to testify or undergo cross-examination. The administrative judge finds that such hearsay lacks probative value. See *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

... The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. ...

Final Decision and Order at 2.

The administrative judge finds that the taxpayer's comparable sales cannot provide a basis of valuation for at least two reasons. First, the sales were not adjusted in accordance with generally accepted appraisal practices. Second, Ms. Scoggin raised legitimate questions concerning each of the sales.

The administrative judge finds that the taxpayer did not introduce an income approach as such. The administrative judge finds that the procedure normally utilized in the income approach has been summarized in one authoritative text as follows:

Although there are various income capitalization techniques available to the appraiser, certain steps are essential in applying the income capitalization approach. Before applying any capitalization techniques, an appraiser must work down from potential gross income to net operating income. To do this, the appraiser will:

1. Research the income and expense data for the subject property and comparables.
2. Estimate the potential gross income of the property by adding the rental income and any other potential income.
3. Estimate the vacancy and collection loss.
4. Subtract vacancy and collection loss from total potential gross income to arrive at the effective gross income of the subject property.
5. Estimate the total operating expenses for the subject by adding fixed expenses, variable expenses, and a replacement allowance (where applicable).
6. Subtract the estimate of total operating expenses from the estimate of effective gross income to arrive at a net operating income.
7. Apply one of the direct or yield capitalization techniques to this data to generate an estimate of value via the income capitalization approach.

Appraisal Institute, *The Appraisal of Real Estate* at 493-94 (12th ed. 2001).

The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

The taxpayer also claimed that the land value set by the assessing authorities. . . was too high. In support of that position, she claimed that. . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following value and assessment remain in effect for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$33,300	\$146,800	\$180,100	\$72,040

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.


Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order";** or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of October, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Robert L. Boggan
Tameaka Stanton-Riley, Appeals Manager